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The Honorable Frederick P. Corbit
Chapter: 7

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:

GIGA WATT, INC., a Washington
corporation,

Debtor.

MARK D. WALDRON, as Chapter 7
Trustee,

Plaintiff,

vs.

PERKINS COIE, LLP, a Washington
limited liability partnership; LOWELL
NESS, individual and California resident;
GIGA WATT PTE., LTD. a Singapore
corporation; and ANDREY KUZENNY, a
citizen of the Russian Federation;

Defendants

and

THE GIGA WATT PROJECT, a
partnership,

Nominal defendant.

No. 18-03197-FPC11

The Honorable Frederick P. Corbit

CHAPTER 7

Adv. Case No. 20-80031

**DECLARATION OF RALPH E.
CROMWELL, JR.**

1 Ralph E. Cromwell, Jr., declares as follows:

2
3 1. I am an attorney licensed to practice law in Washington. I am one of the
4 attorneys representing defendants Perkins Coie LLP and Lowell Ness in this matter. I
5 have personal knowledge of the following.

6 2. When the Trustee issued a Rule 2004 subpoena to Perkins last summer, I
7 was the attorney principally responsible for reviewing files provided by in-house
8 counsel at Perkins to locate responsive, non-privileged documents. One of the
9 document requests issued by the Trustee asked for any agreements regarding an
10 escrow. In reviewing Perkins' file, I did not find any conventional escrow agreement
11 regarding the sale of tokens to access facilities operated by the Debtor in Wenatchee.
12 That is to say, I did not locate any contractual document, to which Perkins was a
13 party, which mentioned an escrow or which gave directions regarding the operation of
14 an escrow. I did locate one or two emails which referenced placing the proceeds of
15 token sales into Perkins' IOLTA account as being an "escrow" which were produced
16 to the Trustee. Some of those emails are referenced or quoted in the Amended
17 Complaint. Perkins also produced an Excel spreadsheet showing all money in and out
18 of its account and some 4,500 pages of emails relating largely to the administration of
19 funds in the IOLTA account.
20
21

22 3. Attached hereto as Exhibit 1 is a true and correct copy of an email which
23 I received from the Trustee's counsel on September 9, 2020. In reviewing Perkins'
24
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1 files, I found no indication that Perkins had ever received or reviewed the version of
2 the “WTT Token Purchase Agreement” attached to this email.
3

4 4. Attached hereto as Exhibit 2 is a true and correct copy of an email which
5 I sent to the Trustee’s counsel on September 15, 2020. Attached to that email is an
6 email dated May 17, 2017, with a “WTT Purchase Agreement” which my office
7 partially redacted.
8

9 5. Attached hereto as Exhibit 3 is a true and correct copy of an unredacted
10 version of the “WTT Purchase Agreement,” which was attached to the May 17, 2017,
11 email referenced in paragraph 4.

12 6. For ease of reference, attached hereto as Exhibit 4 is a true and correct
13 copy of a copy of a letter dated August 2, 2018, which is hyperlinked to the Amended
14 Complaint in this matter. I have not included the exhibits to the letter which are
15 extensive and not relevant.
16

17 7. For ease of reference, attached hereto as Exhibit 5 is a true and correct
18 copy of a copy of Claim 365 filed by Giga Watt Pte. Ltd. the underlying bankruptcy.
19

20 8. The narrative and calculations on pages 6-9 of the Opposition of Perkins
21 and Ness to Trustee’s Motion to Strike Jury Demand reflect my efforts to understand
22 how money transferred in and out of Perkins’ IOLTA account relates to the Trustee’s
23 belief that funds were improperly disbursed from that account. Much of the
24 information referenced was extracted from a spreadsheet generated by Perkins but that
25
26

1 information is now referenced by the Trustee in his Amended Complaint, so I have
2 not attached the spreadsheet hereto.
3

4 9. For ease of reference, attached hereto as Exhibit 6 is a true and correct
5 copy of the Trustee's Interim Report, ECF No. 631.

6 DATED this 26th day of February, 2021.

7 BYRNES KELLER CROMWELL LLP

8 By /s/ Ralph E. Cromwell, Jr.

9 Ralph E. Cromwell, Jr., WSBA #11784

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By /s/ Ralph E. Cromwell, Jr.
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